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SENATE BILL 641

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO TAX ADMINISTRATION; ALLOWING DISBURSEMENTS OF ATTORNEY FEES AND COSTS REQUIRED TO BE MADE BY THE TAXATION AND REVENUE DEPARTMENT FROM THE VARIOUS SUSPENSE FUNDS CREATED IN THE TAX ADMINISTRATION ACT; CLARIFYING CLAIMS AND PROTEST PROCEDURES FOR FOOD AND MEDICAL CLAIMS AND REFUNDS; INCREASING THE THRESHOLD AMOUNT FOR ATTORNEY GENERAL REVIEW OF REFUNDS AND ABATEMENTS; EXPANDING THE TAX INTERCEPT PROGRAM TO INCLUDE REFUNDS DUE TO CORPORATIONS UNDER THE CORPORATE INCOME AND FRANCHISE TAX ACT; AMENDING THE TAX ADMINISTRATION ACT; AMENDING THE TAX REFUND INTERCEPT PROGRAM ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-1-6 NMSA 1978 (being Laws 1978, Chapter 55, Section 1, as amended) is amended to read:

"7-1-6. RECEIPTS--DISBURSEMENTS--FUNDS CREATED.--

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1           A. All money received by the department with  
2 respect to laws administered under the provisions of the Tax  
3 Administration Act shall be deposited with the state treasurer  
4 before the close of the next succeeding business day after  
5 receipt of the money, except that for 1989 and every subsequent  
6 year, money received with respect to the Income Tax Act during  
7 the period starting with the fifth day prior to the due date  
8 for payment of income tax for the year and ending on the tenth  
9 day following that due date shall be deposited before the close  
10 of the tenth business day after receipt of the money.

11           B. Money received or disbursed by the department  
12 shall be accounted for by the department as required by law or  
13 regulation of the secretary of finance and administration.

14           C. Disbursements for tax credits, tax rebates,  
15 refunds, the payment of interest, the payment of fees charged  
16 by attorneys or collection agencies for collection of accounts  
17 as agent for the department, attorney fees and costs awarded by  
18 a court or hearing officer, [~~as the result of oil and gas~~  
19 ~~litigation~~] the payment of credit card service charges on  
20 payments of taxes by use of credit cards, distributions and  
21 transfers shall be made by the department of finance and  
22 administration upon request and certification of their  
23 appropriateness by the secretary or the secretary's delegate.  
24 There are hereby created in the state treasury the "tax  
25 administration suspense fund", the "extraction taxes suspense

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1 fund" and the "workers' compensation collections suspense fund"  
2 for the purpose of making the disbursements authorized by the  
3 Tax Administration Act.

4 D. All revenues collected or received by the  
5 department pursuant to the provisions of the taxes and tax acts  
6 administered under Subsection A of Section 7-1-2 NMSA 1978 and  
7 federal funds from the temporary assistance for needy families  
8 program pursuant to an agreement that the department and the  
9 human services department may enter into for the payment of tax  
10 refunds, tax rebates and tax credits to low-income families  
11 with dependent children otherwise authorized by state or  
12 federal law shall be credited to the tax administration  
13 suspense fund and are appropriated for the purpose of making  
14 the disbursements authorized under this section or otherwise  
15 authorized or required by law to be made from the tax  
16 administration suspense fund.

17 E. All revenues collected or received by the  
18 department pursuant to the taxes or tax acts administered under  
19 Subsection B of Section 7-1-2 NMSA 1978 shall be credited to  
20 the extraction taxes suspense fund and are appropriated for the  
21 purpose of making the disbursements authorized under this  
22 section or otherwise authorized or required by law to be made  
23 from the extraction taxes suspense fund.

24 F. All revenues collected or received by the  
25 department pursuant to the taxes or tax acts administered under

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1 Subsection C of Section 7-1-2 NMSA 1978 may be credited to the  
2 tax administration suspense fund, unless otherwise directed by  
3 law to be credited to another fund or agency, and are  
4 appropriated for the purpose of making disbursements authorized  
5 under this section or otherwise authorized or required by law.

6 G. All revenues collected or received by the  
7 department pursuant to the provisions of Section 52-5-19 NMSA  
8 1978 shall be credited to the workers' compensation collections  
9 suspense fund and are appropriated for the purpose of making  
10 the disbursements authorized under this section or otherwise  
11 authorized or required by law to be made from the workers'  
12 compensation collections suspense fund.

13 H. Disbursements to cover expenditures of the  
14 department shall be made only upon approval of the secretary or  
15 the secretary's delegate.

16 I. Miscellaneous receipts from charges made by the  
17 department to defray expenses pursuant to the provisions of  
18 Section 9-11-6.2 NMSA 1978 and similar charges are appropriated  
19 to the department for its use.

20 J. From the tax administration suspense fund, there  
21 may be disbursed each month amounts approved by the secretary  
22 or the secretary's delegate necessary to maintain a fund hereby  
23 created and to be known as the "income tax suspense fund". The  
24 income tax suspense fund shall be used for the payment of  
25 income tax refunds."

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1 Section 2. Section 7-1-6.26 NMSA 1978 (being Laws 1987,  
2 Chapter 347, Section 11, as amended) is amended to read:

3 "7-1-6.26. COUNTY GOVERNMENT ROAD FUND--DISTRIBUTION.--

4 A. For the purposes of this section, "distributable  
5 amount" means the amount in the county government road fund as  
6 of the last day of any month for which a distribution is  
7 required to be made pursuant to this section in excess of the  
8 balance in that fund as of the last day of the preceding month  
9 after reduction for any required distributions for the  
10 preceding month.

11 B. The secretary of [~~highway and~~] transportation  
12 shall determine and certify on or before [~~July 1, 1987 and on~~  
13 ~~or before~~] July 1 of each [~~subsequent~~] year the total miles of  
14 public roads maintained by each county pursuant to Section  
15 66-6-23 NMSA 1978. For the purposes of this subsection, if the  
16 certified mileage of public roads maintained by a county is  
17 less than four hundred miles, the [~~state treasurer~~] secretary  
18 shall increase the number of miles of public roads maintained  
19 by that county by fifty percent and revise the total miles of  
20 public roads maintained by all counties accordingly. Except as  
21 provided otherwise in Subsection D of this section, each county  
22 shall receive an amount equal to its proportionate share of  
23 miles of public roads maintained, as the number of miles for  
24 the county may have been revised pursuant to this subsection,  
25 to the total miles of public roads maintained by all counties,

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1 as that total may have been revised pursuant to this  
2 subsection, times fifty percent of the distributable amount in  
3 the county government road fund.

4 C. Except as provided otherwise in Subsection D of  
5 this section, each county shall receive a share of fifty  
6 percent of the distributable amount in the county government  
7 road fund as determined in this subsection. The amount for  
8 each county shall be the greater of:

9 (1) twenty-one cents (\$.21) multiplied by the  
10 county's population as shown by the most recent federal  
11 decennial census; or

12 (2) the proportionate share that the taxable  
13 gallons of gasoline reported for that county for the preceding  
14 fiscal year bear to the total taxable gallons of gasoline for  
15 all counties in the preceding fiscal year, as determined by the  
16 department, multiplied by fifty percent of the distributable  
17 amount in the county government road fund.

18 If the sum of the amounts to be distributed pursuant to  
19 Paragraphs (1) and (2) of this subsection exceeds fifty percent  
20 of the distributable amount in the county government road fund,  
21 the excess shall be eliminated by multiplying the amount  
22 determined in Paragraphs (1) and (2) of this subsection for  
23 each county by a fraction, the numerator of which is fifty  
24 percent of the distributable amount in the county government  
25 road fund, and the denominator of which is the sum of amounts

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1 determined for all counties in Paragraphs (1) and (2) of this  
2 subsection.

3 D. If the distribution for a class A county or for  
4 an H class county determined pursuant to Subsections B and C of  
5 this section exceeds an amount equal to one-twelfth of the  
6 product of the total taxable gallons of gasoline reported for  
7 the county for the preceding fiscal year times one cent (\$.01),  
8 the distribution for that county shall be reduced to an amount  
9 equal to one-twelfth of the product of the total taxable  
10 gallons of gasoline reported for the county for the preceding  
11 fiscal year times one cent (\$.01). Any amount of the reduction  
12 shall be shared among the counties whose distribution has not  
13 been reduced pursuant to this subsection in the ratio of the  
14 amounts computed in Subsections B and C of this section.

15 E. If a county has not made the required mileage  
16 certification pursuant to Section 67-3-28.3 NMSA 1978 [~~by May~~  
17 ~~1, 1988, and~~] by April 1 of every year [~~thereafter~~], of the  
18 year for which distribution is being made, the secretary of  
19 [~~highway and~~] transportation shall estimate the mileage  
20 maintained by those counties for the purpose of making  
21 distribution to all counties, and the amount calculated to be  
22 distributed each month to those counties not certifying mileage  
23 shall be reduced by one-third each month for that fiscal year  
24 and that amount not distributed to those counties shall be  
25 distributed equally to all counties that have certified

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1 mileages.

2 F. Distributions made to counties pursuant to this  
3 section shall be deposited in the county road fund to be used  
4 for the construction, reconstruction, resurfacing or other  
5 improvement or maintenance of the public roads and bridges in  
6 the county, including right-of-way and materials acquisition.  
7 Money distributed pursuant to this section may be used by the  
8 county to provide matching funds for projects subject to  
9 cooperative agreements entered into with the [~~state highway~~  
10 ~~and~~] department of transportation [~~department~~] pursuant to  
11 Section 67-3-28 NMSA 1978."

12 Section 3. Section 7-1-6.46 NMSA 1978 (being Laws 2004,  
13 Chapter 116, Section 1, as amended) is amended to read:

14 "7-1-6.46. DISTRIBUTION TO MUNICIPALITIES--OFFSET FOR  
15 FOOD DEDUCTION AND HEALTH CARE PRACTITIONER SERVICES  
16 DEDUCTION.--

17 A. A distribution pursuant to Section 7-1-6.1 NMSA  
18 1978 shall be made to a municipality in an amount, subject to  
19 any increase or decrease made pursuant to Section 7-1-6.15 NMSA  
20 1978, equal to the sum of:

21 (1) for a municipality having a population of  
22 less than ten thousand according to the most recent federal  
23 decennial census and having per capita taxable gross receipts  
24 for the previous calendar year that are less than the average  
25 per capita taxable gross receipts for all municipalities for

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1 that same calendar year:

2 (a) the total deductions claimed  
3 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers  
4 from business locations attributable to the municipality  
5 multiplied by the sum of the combined rate of all municipal  
6 local option gross receipts taxes in effect in the municipality  
7 for the month plus one and two hundred twenty-five thousandths  
8 percent; and

9 (b) the total deductions claimed  
10 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers  
11 from business locations attributable to the municipality  
12 multiplied by the sum of the combined rate of all municipal  
13 local option gross receipts taxes in effect in the municipality  
14 for the month plus one and two hundred twenty-five thousandths  
15 percent; or

16 (2) for a municipality not described in  
17 Paragraph (1) of this subsection:

18 (a) the total deductions claimed  
19 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers  
20 from business locations attributable to the municipality  
21 multiplied by the lesser of: 1) the sum of the combined rate  
22 of all municipal local option gross receipts taxes in effect in  
23 the municipality on January 1, 2007 plus one and two hundred  
24 twenty-five thousandths percent; or 2) the sum of the combined  
25 rate of all municipal local option gross receipts taxes in

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1 effect in the municipality for the month plus one and two  
2 hundred twenty-five thousandths percent; and

3 (b) the total deductions claimed  
4 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers  
5 from business locations attributable to the municipality  
6 multiplied by the lesser of: 1) the sum of the combined rate  
7 of all municipal local option gross receipts taxes in effect in  
8 the municipality on January 1, 2007 plus one and two hundred  
9 twenty-five thousandths percent; or 2) the sum of the combined  
10 rate of all municipal local option gross receipts taxes in  
11 effect in the municipality for the month plus one and two  
12 hundred twenty-five thousandths percent.

13 B. The distribution pursuant to Subsection A of  
14 this section is in lieu of revenue that would have been  
15 received by the municipality but for the deductions provided by  
16 Sections 7-9-92 and 7-9-93 NMSA 1978. The distribution shall  
17 be considered gross receipts tax revenue and shall be used by  
18 the municipality in the same manner as gross receipts tax  
19 revenue, including payment of gross receipts tax revenue bonds.

20 C. For the purposes of this section, "business  
21 locations attributable to the municipality" means business  
22 locations:

- 23 (1) within the municipality;  
24 (2) on land owned by the state, commonly known  
25 as the "state fairgrounds", within the exterior boundaries of

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1 the municipality;

2 (3) outside the boundaries of the municipality  
3 on land owned by the municipality; and

4 (4) on an Indian reservation or pueblo grant  
5 in an area that is contiguous to the municipality and in which  
6 the municipality performs services pursuant to a contract  
7 between the municipality and the Indian tribe or Indian pueblo  
8 if:

9 (a) the contract describes an area in  
10 which the municipality is required to perform services and  
11 requires the municipality to perform services that are  
12 substantially the same as the services the municipality  
13 performs for itself; and

14 (b) the governing body of the  
15 municipality has submitted a copy of the contract to the  
16 secretary.

17 D. A distribution pursuant to this section may be  
18 adjusted for a distribution made to a tax increment development  
19 district with respect to a portion of a gross receipts tax  
20 increment dedicated by a municipality pursuant to the Tax  
21 Increment for Development Act."

22 Section 4. Section 7-1-6.47 NMSA 1978 (being Laws 2004,  
23 Chapter 116, Section 2, as amended) is amended to read:

24 "7-1-6.47. DISTRIBUTION TO COUNTIES--OFFSET FOR FOOD  
25 DEDUCTION AND HEALTH CARE PRACTITIONER SERVICES DEDUCTION.--

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1           A. A distribution pursuant to Section 7-1-6.1 NMSA  
2 1978 shall be made to a county in an amount, subject to any  
3 increase or decrease made pursuant to Section 7-1-6.15 NMSA  
4 1978, equal to the sum of:

5                   (1) for a county having a population of less  
6 than forty-eight thousand according to the most recent federal  
7 decennial census:

8                           (a) the total deductions claimed  
9 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers  
10 from business locations within a municipality in the county  
11 multiplied by the combined rate of all county local option  
12 gross receipts taxes in effect for the month that are imposed  
13 throughout the county;

14                           (b) the total deductions claimed  
15 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers  
16 from business locations in the county but not within a  
17 municipality multiplied by the combined rate of all county  
18 local option gross receipts taxes in effect for the month that  
19 are imposed in the county area not within a municipality;

20                           (c) the total deductions claimed  
21 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers  
22 from business locations within a municipality in the county  
23 multiplied by the combined rate of all county local option  
24 gross receipts taxes in effect for the month that are imposed  
25 throughout the county; and

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1 (d) the total deductions claimed  
2 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers  
3 from business locations in the county but not within a  
4 municipality multiplied by the combined rate of all county  
5 local option gross receipts taxes in effect for the month that  
6 are imposed in the county area not within a municipality; or

7 (2) for a county not described in Paragraph  
8 (1) of this subsection:

9 (a) the total deductions claimed  
10 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers  
11 from business locations within a municipality in the county  
12 multiplied by the lesser of: 1) the combined rate of all  
13 county local option gross receipts taxes in effect on January  
14 1, 2007 that are imposed throughout the county; or 2) the  
15 combined rate of all county local option gross receipts taxes  
16 in effect for the month that are imposed throughout the county;

17 (b) the total deductions claimed  
18 pursuant to Section 7-9-92 NMSA 1978 for the month by taxpayers  
19 from business locations in the county but not within a  
20 municipality multiplied by the combined rate of all county  
21 local option gross receipts taxes in effect on January 1, 2007  
22 that are imposed in the county area not within a municipality;

23 (c) the total deductions claimed  
24 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers  
25 from business locations within a municipality in the county

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1 multiplied by the lesser of: 1) the combined rate of all  
2 county local option gross receipts taxes in effect on January  
3 1, 2007 that are imposed throughout the county; or 2) the  
4 combined rate of all county local option gross receipts taxes  
5 in effect for the month that are imposed throughout the county;  
6 and

7 (d) the total deductions claimed  
8 pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers  
9 from business locations in the county but not within a  
10 municipality multiplied by the lesser of: 1) the combined rate  
11 of all county local option gross receipts taxes in effect on  
12 January 1, 2007 that are imposed in the county area not within  
13 a municipality; or 2) the combined rate of all county local  
14 option gross receipts taxes in effect for the month that are  
15 imposed in the county area not within a municipality.

16 B. The distribution pursuant to Subsection A of  
17 this section is in lieu of revenue that would have been  
18 received by the county but for the deductions provided by  
19 Sections 7-9-92 and 7-9-93 NMSA 1978. The distribution shall  
20 be considered gross receipts tax revenue and shall be used by  
21 the county in the same manner as gross receipts tax revenue,  
22 including payment of gross receipts tax revenue bonds.

23 C. A distribution pursuant to this section may be  
24 adjusted for a distribution made to a tax increment development  
25 district with respect to a portion of a gross receipts tax

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1 increment dedicated by a county pursuant to the Tax Increment  
2 for Development Act."

3 Section 5. Section 7-1-16 NMSA 1978 (being Laws 1965,  
4 Chapter 248, Section 19, as amended) is amended to read:

5 "7-1-16. DELINQUENT TAXPAYER.--

6 A. Except as provided in Subsection D of this  
7 section, any taxpayer to whom taxes have been assessed as  
8 provided in Section 7-1-17 NMSA 1978 or upon whom demand for  
9 payment has been made as provided in Section 7-1-63 NMSA 1978  
10 who does not within [~~thirty~~] ninety days after the date of  
11 assessment or demand for payment make payment, protest the  
12 assessment or demand for payment as provided by Section 7-1-24  
13 NMSA 1978 or furnish security for payment as provided by  
14 Section 7-1-54 NMSA 1978 becomes a delinquent taxpayer and  
15 remains such until:

16 (1) payment of the total amount of all such  
17 taxes is made;

18 [~~(2) a retroactive extension of time to file a~~  
19 ~~protest is granted pursuant to Section 7-1-24 NMSA 1978;~~  
20 ~~provided, however, that the taxpayer again becomes a delinquent~~  
21 ~~taxpayer if the assessment is not abated and the taxpayer does~~  
22 ~~not pay, protest or furnish security within the time allowed by~~  
23 ~~the retroactive extension of time;~~

24 ~~(3)]~~ (2) security is furnished for payment; or

25 [~~(4)]~~ (3) no part of the assessment remains

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1 unabated.

2 B. Any taxpayer who fails to provide security as  
3 required by Subsection D of Section 7-1-54 NMSA 1978 shall be  
4 deemed to be a delinquent taxpayer.

5 C. If a taxpayer files a protest as provided in  
6 Section 7-1-24 NMSA 1978, the taxpayer nevertheless becomes a  
7 delinquent taxpayer upon failure of the taxpayer to appear, in  
8 person or by authorized representative, at the hearing set or  
9 upon failure to perfect an appeal from any decision or part  
10 thereof adverse to the taxpayer to the next higher appellate  
11 level, as provided in that section, unless the taxpayer makes  
12 payment of the total amount of all taxes assessed and remaining  
13 unabated or furnishes security for payment.

14 D. A taxpayer does not become a delinquent taxpayer  
15 if the taxpayer

16 ~~[(1) files for an extension of time to file a~~  
17 ~~protest as provided in Section 7-1-24 NMSA 1978 within thirty~~  
18 ~~days after the date of the assessment or demand for payment,~~  
19 ~~unless the assessment is not abated and the taxpayer does not~~  
20 ~~pay, protest or furnish security within the time allowed by the~~  
21 ~~extension of time; or~~

22 ~~(2)]~~ has been issued an assessment as a result  
23 of a managed audit but is still within the allowed time period  
24 to pay the tax due as specified in Paragraph (4) of Subsection  
25 A of Section 7-1-67 NMSA 1978."

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1 Section 6. Section 7-1-19 NMSA 1978 (being Laws 1971,  
2 Chapter 21, Section 1, as amended) is amended to read:

3 "7-1-19. LIMITATION OF ACTIONS.--No action or proceeding  
4 shall be brought to collect taxes administered under the  
5 provisions of the Tax Administration Act and due under an  
6 assessment or notice of the assessment of taxes after the later  
7 of either ten years from the date of such assessment or notice  
8 or, with respect to undischarged amounts in a bankruptcy  
9 proceeding, one year [~~after~~] after the later of the issuance of  
10 the final order or the date of the last scheduled payment."

11 Section 7. Section 7-1-24 NMSA 1978 (being Laws 1965,  
12 Chapter 248, Section 26, as amended) is amended to read:

13 "7-1-24. ADMINISTRATIVE HEARING--PROCEDURE.--

14 A. Any taxpayer may dispute the assessment to the  
15 taxpayer of any amount of tax, the application to the taxpayer  
16 of any provision of the Tax Administration Act or the denial of  
17 or failure [~~to~~] either to allow or to deny a credit or a claim  
18 for refund made in accordance with Section 7-1-26 NMSA 1978 by  
19 filing with the secretary a written protest against the  
20 assessment or against the application to the taxpayer of the  
21 provision or against the denial of or the failure to allow or  
22 deny the amount claimed as a credit or to have been erroneously  
23 paid as tax. Every protest shall identify the taxpayer and the  
24 tax or credit involved and state the grounds for the taxpayer's  
25 protest and the affirmative relief requested. The statement of

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1 grounds for protest shall specify individual grounds upon which  
2 the protest is based and a summary statement of the evidence  
3 expected to be produced supporting each ground asserted, if  
4 any; provided that the taxpayer may supplement the statement at  
5 any time prior to ten days before any hearing conducted on the  
6 protest pursuant to Subsection D of this section or, if a  
7 scheduling order has been issued, in accordance with the  
8 scheduling order. The secretary may, in appropriate cases,  
9 provide for ~~[an informal conference]~~ one or more informal  
10 conferences before ~~[setting a]~~ the hearing of the protest or  
11 acting on any claim for refund.

12 B. Any protest by a taxpayer shall be filed within  
13 ~~[thirty]~~ ninety days of the date of the mailing to the taxpayer  
14 by the department of the notice of assessment or mailing to, or  
15 service upon, the taxpayer of other peremptory notice or  
16 demand, or the date of mailing or filing a return. ~~[Upon~~  
17 ~~written request of the taxpayer made within the time permitted~~  
18 ~~for filing a protest, the secretary may grant an extension of~~  
19 ~~time, not to exceed sixty days, within which to file the~~  
20 ~~protest.]~~ If a protest is not filed within the time required  
21 for filing a protest ~~[or, if an extension has been granted,~~  
22 ~~within the extended time]~~, the secretary may proceed to enforce  
23 collection of any tax if the taxpayer is delinquent within the  
24 meaning of Section 7-1-16 NMSA 1978. ~~[Upon written request of~~  
25 ~~the taxpayer made after the time for filing a protest but not~~

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1 ~~more than sixty days after the expiration of the time for~~  
2 ~~filing a protest, the secretary may grant a retroactive~~  
3 ~~extension of time, not to exceed sixty days, within which to~~  
4 ~~file the protest; provided that the taxpayer demonstrates to~~  
5 ~~the secretary's satisfaction that the taxpayer was not able to~~  
6 ~~file a protest or to request an extension within the time to~~  
7 ~~file the protest and that the grounds for the protest have~~  
8 ~~substantial merit.]~~ The fact that the department did not mail  
9 the assessment or other peremptory notice or demand by  
10 certified or registered mail or otherwise demand and receive  
11 acknowledgment of receipt by the taxpayer shall not be deemed  
12 to demonstrate the taxpayer's inability to protest [~~or request~~  
13 ~~an extension within the time for filing a protest]~~ within the  
14 required time. [~~The secretary shall not grant a retroactive~~  
15 ~~extension if a levy has already been served under Section~~  
16 ~~7-1-31 or 7-1-33 NMSA 1978 or a jeopardy assessment has been~~  
17 ~~made under Section 7-1-59 NMSA 1978.]~~ No proceedings other  
18 than those to enforce collection of any amount assessed as tax  
19 and to protect the interest of the state by injunction, as  
20 provided in Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53,  
21 7-1-56 and 7-1-58 NMSA 1978, are stayed by timely filing of a  
22 protest under this section.

23 C. Claims for refund shall be filed as provided for  
24 in Section 7-1-26 NMSA 1978.

25 D. Upon timely receipt of a protest, the department

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1 or hearing officer shall promptly set a date for hearing and on  
2 that date hear the protest or claim.

3 E. A hearing officer shall be designated by the  
4 secretary to conduct the hearing. Taxpayers may appear at a  
5 hearing for themselves or be represented by a bona fide  
6 employee, an attorney, a certified public accountant, ~~[or]~~ a  
7 registered public accountant or, with respect only to tax  
8 imposed pursuant to the Income Tax Act, a person who is an  
9 enrolled agent for federal income tax purposes. If the  
10 department and the taxpayer agree, the hearing may be conducted  
11 through videoconferencing. Hearings shall not be open to the  
12 public except upon request of the taxpayer and may be postponed  
13 or continued at the discretion of the hearing officer.

14 F. A hearing officer shall not engage or  
15 participate in any way as an employee of the department in the  
16 areas of enforcement or formulating general tax policy other  
17 than to conduct hearings. A taxpayer may request that the  
18 secretary determine whether a hearing officer has engaged or  
19 participated in tax policy or enforcement in a way that might  
20 reasonably be expected to affect the hearing officer's  
21 impartiality in a particular matter. The secretary may  
22 designate another hearing officer for the matter to avoid  
23 actual or apparent prejudice.

24 G. A hearing officer shall not engage in ex-parte  
25 communications concerning the substantive issues of any matter

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1 that has been protested while that matter is still pending. If  
2 the secretary finds that a hearing officer has engaged in  
3 prohibited ex-parte communications, the secretary shall  
4 designate another hearing officer for that matter.

5 H. In hearings before the hearing officer, the  
6 technical rules of evidence shall not apply, but in ruling on  
7 the admissibility of evidence, the hearing officer may require  
8 reasonable substantiation of statements or records tendered,  
9 the accuracy or truth of which is in reasonable doubt. A  
10 taxpayer may request a written ruling on any contested question  
11 of evidence in a matter in which the taxpayer has filed a  
12 written protest and that protest is pending.

13 I. In hearings before the hearing officer, the  
14 Rules of Civil Procedure for the District Courts shall not  
15 apply, but the hearing shall be conducted so that both  
16 complaints and defenses are amply and fairly presented. To  
17 this end, the hearing officer shall hear arguments, permit  
18 discovery, entertain and dispose of motions, require written  
19 expositions of the case as the circumstances justify and render  
20 a decision in accordance with the law and the evidence  
21 presented and admitted. A taxpayer may request a written  
22 ruling on any contested question of procedure in a matter in  
23 which the taxpayer has filed a written protest and that protest  
24 is pending.

25 J. In the case of the hearing of any protest, the

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1 hearing officer shall make and preserve a complete record of  
2 the proceedings. At the beginning of the hearing, the hearing  
3 officer shall inform the taxpayer of the taxpayer's right to  
4 representation. The hearing officer, within thirty days of the  
5 hearing, shall inform the protestant in writing of the  
6 decision, informing the protestant at the same time of the  
7 right to, and the requirements for perfection of, an appeal  
8 from the decision to the court of appeals and of the  
9 consequences of a failure to appeal. The written decision  
10 shall embody an order granting or denying the relief requested  
11 or granting such part thereof as seems appropriate.

12 K. A taxpayer with two or more protests containing  
13 related issues may request that such protests be combined and  
14 heard jointly. The designated hearing officer shall grant the  
15 request to combine protests unless it would create an  
16 unreasonable burden on the department.

17 L. Nothing in this section shall be construed to  
18 authorize any criminal proceedings hereunder or to authorize an  
19 administrative protest of the issuance of a subpoena or  
20 summons."

21 Section 8. Section 7-1-28 NMSA 1978 (being Laws 1965,  
22 Chapter 248, Section 30, as amended) is amended to read:

23 "7-1-28. AUTHORITY FOR ABATEMENTS OF ASSESSMENTS OF  
24 TAX.--

25 A. In response to a written protest against an

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1 assessment, submitted in accordance with the provisions of  
2 Section 7-1-24 NMSA 1978, but before any court acquires  
3 jurisdiction of the matter, or when a "notice of assessment of  
4 taxes" is incorrect, the secretary or the secretary's delegate  
5 ~~[with prior written approval of the attorney general]~~ may abate  
6 any part of an assessment determined by the secretary or the  
7 secretary's delegate to have been incorrectly, erroneously or  
8 illegally made. An abatement of twenty-five thousand dollars  
9 (\$25,000) or more may be made only with the prior approval of  
10 the attorney general, except that the secretary or the  
11 secretary's delegate may make abatements ~~[(1)]~~ with respect to  
12 the Oil and Gas Severance Tax Act, the Oil and Gas Conservation  
13 Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and  
14 Gas Ad Valorem Production Tax Act, the Natural Gas Processors  
15 Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax  
16 Act, abatements of gasoline tax made under Section 7-13-17 NMSA  
17 1978 and abatements of cigarette tax made under the Cigarette  
18 Tax Act without the prior approval of the attorney general  
19 regardless of the amount.

20 ~~[(2) with respect to the Corporate Income and~~  
21 ~~Franchise Tax Act amounting to less than twenty thousand~~  
22 ~~dollars (\$20,000) without prior approval of the attorney~~  
23 ~~general; and~~

24 ~~(3) amounting to less than ten thousand~~  
25 ~~dollars (\$10,000) without the prior written approval of the~~

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1 ~~attorney general.]~~

2 B. Pursuant to the final order of the district  
3 court for Santa Fe county, the court of appeals, the supreme  
4 court of New Mexico or any federal court, from which order,  
5 appeal or review is not successfully taken by the department,  
6 adjudging that any person is not required to pay any portion of  
7 tax assessed to that person, the secretary or the secretary's  
8 delegate shall cause that amount of the assessment to be  
9 abated.

10 C. Pursuant to a compromise of taxes agreed to by  
11 the secretary and according to the terms of the closing  
12 agreement formalizing the compromise, the secretary or the  
13 secretary's delegate shall cause the abatement of the  
14 appropriate amount of any assessment of tax.

15 D. The secretary or the secretary's delegate shall  
16 cause the abatement of the amount of an assessment of tax that  
17 is equal to the amount of [~~fee~~] fees paid to or retained by an  
18 out-of-state attorney or collection agency from a judgment or  
19 the amount collected by the attorney or collection agency  
20 pursuant to Section 7-1-58 NMSA 1978.

21 E. Records of abatements made in excess of ten  
22 thousand dollars (\$10,000) shall be available for inspection by  
23 the public. The department shall keep such records for a  
24 minimum of three years from the date of the abatement.

25 F. In response to a timely protest pursuant to

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1 Section 7-9-24 NMSA 1978 of an assessment by the department and  
2 notwithstanding any other provision of the Tax Administration  
3 Act, the secretary or the secretary's delegate may abate a  
4 portion of an assessment of tax, including applicable penalties  
5 and interest, representing the amount of tax previously paid by  
6 another person on behalf of the taxpayer on the same  
7 transaction, provided that the requirements of equitable  
8 recoupment are met. For purposes of this subsection, the  
9 protest of the department's assessment may be made by the  
10 taxpayer to whom the assessment was issued or by the other  
11 person who claims to have previously paid the tax on behalf of  
12 the taxpayer."

13 Section 9. Section 7-1-29 NMSA 1978 (being Laws 1965,  
14 Chapter 248, Section 31, as amended) is amended to read:

15 "7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS.--

16 A. In response to a claim of a credit or a claim  
17 for refund made as provided in Section 7-1-26 NMSA 1978, but  
18 before a court acquires jurisdiction of the matter, the  
19 secretary or the secretary's delegate may authorize payment to  
20 a person of a credit claimed or the refund to a person of the  
21 amount of an overpayment of tax determined by the secretary or  
22 the secretary's delegate to have been [~~erroneously~~] made  
23 erroneously by the person, together with allowable interest. A  
24 payment of a credit claimed or a refund of tax and interest  
25 erroneously paid [~~and~~] amounting to [~~more than ten thousand~~

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1 ~~dollars (\$10,000)]~~ twenty-five thousand dollars (\$25,000) or  
2 more may be made to a person only with the prior approval of  
3 the attorney general, except that the secretary or the  
4 secretary's delegate may make refunds with respect to [~~(1)~~] the  
5 Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax  
6 Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas  
7 Ad Valorem Production Tax Act, the Natural Gas Processors Tax  
8 Act or the Oil and Gas Production Equipment Ad Valorem Tax Act,  
9 Section 7-13-17 NMSA 1978 and the Cigarette Tax Act without the  
10 prior approval of the attorney general regardless of the  
11 amount. [~~and~~

12 ~~(2) the Corporate Income and Franchise Tax Act~~  
13 ~~amounting to less than twenty thousand dollars (\$20,000)~~  
14 ~~without the prior approval of the attorney general.]~~

15 B. Pursuant to the final order of the district  
16 court, the court of appeals, the supreme court of New Mexico or  
17 a federal court, from which order, appeal or review is not  
18 successfully taken, adjudging that a person has properly  
19 claimed a credit or has made an overpayment of tax, the  
20 secretary shall authorize the [~~refund~~] payment to the person of  
21 the amount thereof.

22 C. In the discretion of the secretary, any amount  
23 of credit to be paid or tax to be refunded may be offset  
24 against any amount of tax for which the person due to receive  
25 the credit payment or refund is liable. The secretary or the

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1 secretary's delegate shall give notice to the taxpayer that the  
2 credit payment or refund will be made in this manner, and the  
3 taxpayer shall be entitled to interest pursuant to Section  
4 7-1-68 NMSA 1978 until the tax liability is credited with the  
5 credit or refund amount.

6 D. In an audit by the department or a managed audit  
7 covering multiple reporting periods in which both underpayments  
8 and overpayments of a tax have been made in different reporting  
9 periods, the department shall credit the tax overpayments  
10 against the underpayments, provided that the taxpayer files a  
11 claim for refund of the overpayments. An overpayment shall be  
12 applied as a credit first to the earliest underpayment and then  
13 to succeeding underpayments. An underpayment of tax to which  
14 an overpayment is credited pursuant to this section shall be  
15 deemed paid in the period in which the overpayment was made or  
16 the period to which the overpayment was credited against an  
17 underpayment, whichever is later. If the overpayments credited  
18 pursuant to this section exceed the underpayments of a tax, the  
19 amount of the net overpayment for the periods covered in the  
20 audit shall be refunded to the taxpayer.

21 E. When a taxpayer makes a payment identified to a  
22 particular return or assessment, and the department determines  
23 that the payment exceeds the amount due pursuant to that return  
24 or assessment, the secretary may apply the excess to the  
25 taxpayer's other liabilities pursuant to the tax acts to which

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1 the return or assessment applies, without requiring the  
2 taxpayer to file a claim for a refund. The liability to which  
3 an overpayment is applied pursuant to this section shall be  
4 deemed paid in the period in which the overpayment was made or  
5 the period to which the overpayment was applied, whichever is  
6 later.

7 F. If the department determines, upon review of an  
8 original or amended income tax return, corporate income and  
9 franchise tax return, estate tax return, special [~~fuels~~] fuel  
10 excise tax return or oil and gas tax return, that there has  
11 been an overpayment of tax for the taxable period to which the  
12 return or amended return relates in excess of the amount due to  
13 be refunded to the taxpayer pursuant to the provisions of  
14 Subsection J of Section 7-1-26 NMSA 1978, the department may  
15 refund that excess amount to the taxpayer without requiring the  
16 taxpayer to file a refund claim.

17 G. Records of refunds and credits made in excess of  
18 ten thousand dollars (\$10,000) shall be available for  
19 inspection by the public. The department shall keep such  
20 records for a minimum of three years from the date of the  
21 refund or credit.

22 H. In response to a timely refund claim pursuant to  
23 Section 7-9-26 NMSA 1978 and notwithstanding any other  
24 provision of the Tax Administration Act, the secretary or the  
25 secretary's delegate may refund or credit a portion of an

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1 assessment of tax paid, including applicable penalties and  
2 interest representing the amount of tax previously paid by  
3 another person on behalf of the taxpayer on the same  
4 transaction, provided that the requirements of equitable  
5 recoupment are met. For purposes of this subsection, the  
6 refund claim may be filed by the taxpayer to whom the  
7 assessment was issued or by the other person who claims to have  
8 previously paid the tax on behalf of the taxpayer. Prior to  
9 granting the refund or credit, the secretary may require a  
10 waiver of all rights to claim a refund or credit of the tax  
11 previously paid by the other person paying a tax on behalf of  
12 the taxpayer."

13 Section 10. Section 7-1-29.1 NMSA 1978 (being Laws 2003,  
14 Chapter 398, Section 12) is amended to read:

15 "7-1-29.1. AWARDING OF COSTS AND FEES.--

16 A. In any administrative or court proceeding that  
17 is brought by or against the taxpayer on or after July 1, 2003  
18 in connection with the determination, collection or refund of  
19 any credit, tax, interest or penalty for a credit or tax  
20 governed by the provisions of the Tax Administration Act, the  
21 taxpayer shall be awarded a judgment or a settlement for  
22 reasonable administrative costs incurred in connection with an  
23 administrative proceeding with the department or reasonable  
24 litigation costs incurred in connection with a court  
25 proceeding, if the taxpayer is the prevailing party.

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1                   B. As used in this section:

2                   (1) "administrative proceeding" means any  
3 procedure or other action before the department;

4                   (2) "court proceeding" means any civil action  
5 brought in state district court;

6                   (3) "reasonable administrative costs" means:

7                   (a) any administrative fees or similar  
8 charges imposed by the department; and

9                   (b) actual charges for: 1) filing fees,  
10 court reporter fees, service of process fees and similar  
11 expenses; 2) the services of expert witnesses; 3) any study,  
12 analysis, report, test or project reasonably necessary for the  
13 preparation of the party's case; and 4) fees and costs paid or  
14 incurred for the services in connection with the proceeding of  
15 attorneys or of certified public accountants who are authorized  
16 to practice before the department; and

17                   (4) "reasonable litigation costs" means:

18                   (a) reasonable court costs; and

19                   (b) actual charges for: 1) filing fees,  
20 court reporter fees, service of process fees and similar  
21 expenses; 2) the services of expert witnesses; 3) any study,  
22 analysis, report, test or project reasonably necessary for the  
23 preparation of the party's case; and 4) fees and costs paid or  
24 incurred for the services of attorneys in connection with the  
25 proceeding.

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C. For purposes of this section:

(1) the taxpayer is the prevailing party if the taxpayer has:

(a) substantially prevailed with respect to the amount controversy; or

(b) substantially prevailed with respect to most of the issues involved in the case or the most significant issue or set of issues involved in the case;

(2) the taxpayer shall not be treated as the prevailing party if the department establishes that the position of the department in the proceeding was based upon a reasonable application of the law to the facts of the case. For purposes of this paragraph, the position of the department shall be presumed not to be based upon a reasonable application of the law to the facts of the case if:

(a) the department did not follow its applicable published guidance in the proceeding; or

(b) the assessment giving rise to the proceeding is not supported by substantial evidence determined at the time of the issuance of the assessment;

(3) as used in Subparagraph (a) of Paragraph (2) of this subsection, "applicable published guidance" means:

(a) department regulations, information releases, instructions, notices, technical advice memoranda and announcements; and

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1 (b) private letter rulings and letters  
2 issued by the department to the taxpayer; and

3 (4) the determination of whether the taxpayer  
4 is the prevailing party and the amount of reasonable litigation  
5 costs or reasonable administrative costs shall be made by  
6 agreement of the parties or:

7 (a) in the case where the final  
8 determination with respect to the credit tax, interest or  
9 penalty is made in an administrative proceeding, by the  
10 department hearing officer; or

11 (b) in the case where the final  
12 determination is made by the court, by the court.

13 D. An order granting or denying in whole or in part  
14 an award for reasonable litigation costs pursuant to Subsection  
15 A of this section in a court proceeding may be incorporated as  
16 a part of the decision or judgment in the court proceeding and  
17 shall be subject to appeal in the same manner as the decision  
18 or judgment. A decision or order granting or denying in whole  
19 or in part an award for reasonable administrative costs  
20 pursuant to Subsection A of this section by the department  
21 hearing officer shall be reviewable in the same manner as a  
22 decision of the department hearing officer.

23 E. No agreement for or award of reasonable  
24 administrative costs or reasonable litigation costs in any  
25 administrative or court proceeding pursuant to Subsection A of

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1 this section shall exceed the lesser of twenty percent of the  
2 amount of the settlement or judgment or fifty thousand dollars  
3 (\$50,000). A taxpayer awarded administrative litigation costs  
4 pursuant to this section may not receive an award of attorney  
5 fees pursuant to Subsection D of Section 7-1-25 NMSA 1978."

6 Section 11. Section 7-2C-5 NMSA 1978 (being Laws 1985,  
7 Chapter 106, Section 5, as amended) is amended to read:

8 "7-2C-5. DEPARTMENT TO AID IN COLLECTION OF DEBTS THROUGH  
9 SETOFF.--Subject to the limitations contained in the Tax Refund  
10 Intercept Program Act, the department, upon request, shall  
11 render assistance in the collection of any debt owed to a  
12 claimant agency or any debt that a claimant agency is obligated  
13 by law to collect. This assistance shall be provided by  
14 withholding from any refund due to the debtor pursuant to the  
15 Income Tax Act or the Corporate Income and Franchise Tax Act  
16 the amount of debt meeting the requirements of the Tax Refund  
17 Intercept Program Act and paying over to the claimant agency  
18 the amount withheld."

19 Section 12. TEMPORARY PROVISION--TRANSITION TIMING--  
20 PROTESTS.--With respect to the time for filing a written  
21 protest pursuant to Section 7-1-24 NMSA 1978, if the date of  
22 mailing, service or filing was on or before June 1, 2009, the  
23 time limits prescribed in that version of Section 7-1-24 NMSA  
24 1978 in effect immediately prior to the effective date of this  
25 2009 act apply. If the date of mailing, service or filing is

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1 on or after June 2, 2009, the time limit prescribed in that  
2 version of Section 7-1-24 NMSA 1978 in effect on the effective  
3 date of this 2009 act applies.

4 Section 13. EFFECTIVE DATE.--The effective date of the  
5 provisions of this act is July 1, 2009.

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